DRN-5344054

The complaint

Mr B complains that BUPA Insurance Limited declined to pay for an assessment under his private health insurance policy.

What happened

Mr B has had a private health insurance policy with Bupa since 1 August 2023. He's unhappy that Bupa declined to pay for an autistic spectrum disorder ("ASD") assessment in November 2024 due to a policy exclusion that was applied in the August 2024 renewal.

In short, Mr B is unhappy about the following:

- Bupa hasn't shown it highlighted the change in policy terms, as it should have done.
- His claim started in January 2024 when he first contacted Bupa, and it authorised an ADHD assessment as this was covered by the policy at the time. He wouldn't have known what assessments or treatment he needed at this point.
- He wasn't able to seek treatment sooner due to his conditions, and Bupa's failure to accommodate his circumstances is discriminatory.
- The way Bupa's staff treated him is unacceptable, and it needs to pay him compensation for this.

Bupa said ADHD and ASD are separate conditions, and referrals for these are dealt with separately. And as the referral for ASD was received after the policy renewed in August 2024, the decision to decline cover was correct as this was now excluded under Mr B's policy.

Bupa was satisfied it highlighted the change in policy terms to Mr B when it sent him the renewal documents in June 2024, and he confirmed during a phone call in July 2024 that he'd received and understood these. But Bupa accepted its advisor hadn't dealt with a particular phone call as well as they should have done. It apologised for this.

One of our investigators reviewed Mr B's complaint. Having done so, he didn't agree there was anything else Bupa needed to do, to resolve the complaint.

Mr B didn't agree with our investigator's outcome. In summary, he said the following:

- Date of referral should be considered when assessing a claim, not just the date of treatment. Ultimately, the ASD assessment was part of a claim that started in January 2024.
- Bupa hasn't acted in line with regulatory requirements when it didn't clearly highlight the significant change in policy terms and conditions. This meant Mr B wasn't able to make an informed decision about renewing his policy.

- We haven't considered that Bupa hasn't acted in line with the Equality Act 2010 by specifically excluding ADHD and ASD assessments from cover.

- The delay in receiving the ASD assessment has had a significant impact on Mr B's mental health, which we haven't considered.

- Bupa has accepted there were failings in the service it provided, yet we haven't accepted this or held Bupa accountable.

As no agreement was made, the complaint has been allocated to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Industry rules set by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into consideration when deciding what is fair and reasonable in the circumstances of Mr B's complaint.

It's not for this Service to decide if a business has breached the Equality Act 2010 – that's a matter for the Courts. But as it's relevant here, I have taken this law into consideration when deciding what's fair and reasonable in all the circumstances of this complaint.

Mr B's claim

Firstly, Mr B says Bupa indirectly discriminated against him because of disability by removing the exception for diagnostic tests to rule out ADHD and ASD when a mental health condition was suspected. Where a consumer meets the criteria needed for an indirect discrimination claim to be established, an insurer would need to establish that the decision to remove the exception was justifiable – so, a proportionate means of achieving a legitimate aim. However, an insurer doesn't contravene the relevant provisions of the Equality Act 2010 where the insurance exception (detailed in Schedule 3 of the Act) applies.

Bupa has sent us information about its decision to remove the exception which I've reviewed carefully. However, this is commercially sensitive information, so I won't be able to share the detail with Mr B. Having reviewed and considered the information Bupa sent, I'm persuaded it hasn't treated Mr B unfairly or unreasonably when it removed the exception.

I've then considered if Bupa did enough to highlight the change in policy terms to Mr B.

I'm persuaded that Bupa sent Mr B renewal documents in June 2024. A screenshot of Bupa's system shows that these were created and dispatched, and Mr B confirmed during a phone call in July 2024 that he'd received and understood the renewal documents.

The renewal documents included a document titled *"Important information. Here's how your Bupa By You health insurance is changing."* And under *"What isn't covered"* it said the following:

> *"Exclusion 19 Learning difficulties, behavioural and developmental conditions*
>
> *We've removed the exception to this exclusion which allowed cover for diagnostic tests to rule out ADHD and ASD when a mental health condition was suspected.*

Mental health cover still includes support for the mental health symptoms arising from learning difficulties, behavioural and developmental conditions."

This exclusion is highlighted in the Insurance Product Information Document ("IPID"):

"What is not insured? […]
Treatment of or relating to […]
Learning, behavioural and developmental conditions."

And the terms and conditions set out under *"What isn't covered"* the following:

"19 Learning difficulties, behavioural and development conditions
Treatment for behavioural conditions, such as attention deficit hyperactivity disorder (ADHD), and autistic spectrum disorder (ASD) isn't covered."

Overall, I'm satisfied Bupa did enough to highlight the exclusion, and change in policy terms, to Mr B. I'm also satisfied that the terms are clear that treatment for ASD isn't covered.

I appreciate Mr B considers his claim started already in January 2024. But at this point, he called Bupa about depression, anxiety and an ADHD assessment. It wasn't until November 2024 that a practitioner recommended he undergoes an ASD assessment as well. Bupa says it considers ADHD and ASD assessments separately, as they're separate conditions. So, Mr B's claim for an ASD assessment didn't start until in November 2024. And at this point, it was excluded by his policy. Overall, I agree that Bupa acted in line with the policy terms and conditions when it declined Mr B's claim for ASD assessment.

For completeness, I can see that Bupa paid Mr B's claim for ADHD assessment even though this wasn't completed until after the policy renewed. And the policy terms say the following:

"Your policy pays for treatment you have on the date the treatment takes place while you're covered under the agreement. We only pay benefits in line with the cover that applies to you on the date the treatment takes place. It doesn't cover any treatment, that takes place after the date your cover ends even if we've pre-authorised it."

This means the relevant date when considering payment for treatment is the date the treatment takes place. But Bupa has explained that it agreed to cover existing assessment requests for a period after policy renewal. So, I'm satisfied it treated Mr B fairly and reasonably when it did so, as it had pre-authorised the ADHD assessment before renewal.

I appreciate Mr B says it took him longer to pursue his claim due to his condition. But I'm satisfied Bupa did enough to make him aware of a change in policy terms when it sent him the renewal documents in June 2024. And I'm satisfied the policy terms make it clear that cover for Mr B's claim for ASD assessment was excluded from August 2024 onwards. So, I don't agree I could fairly ask Bupa to accept Mr B's claim outside the policy terms and conditions.

The service Bupa provided

Bupa has apologised for the service it provided to Mr B during a particular phone call. Bupa accepted that the advisor spoke over Mr B and responded to his concerns in a way that fell short of the standards it expected. Bupa apologised for this, and especially if the advisor's tone came across as patronising. I agree an apology for this was fair and reasonable.

I've also listened to other phone calls Mr B had with another advisor. Firstly, I haven't seen anything to suggest Bupa shared Mr B's information with a third party. I appreciate the advisor said they were hoping to resolve Mr B's complaint first thing the following morning, but didn't do so until later that day. But overall, I'm satisfied Bupa responded to Mr B's complaint in a timely manner – it had eight weeks to do so. Overall, I don't agree Bupa acted unfairly or unreasonably in the circumstances.

My final decision

My final decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 July 2025.

Renja Anderson
Ombudsman